A Guide to Employment Standards

WORKING TOGETHER

Ces renseignements sont également offerts en français.

Manitoba
Labour and
Immigration
Employment
Standards

FREQUENTLY CALLED NUMBERS

WINNIPEG

MANITOBA LABOUR AND IMMIGRATION

Manitoba Labour Board	**945-3783**
Worker Advisor Office	**945-5787** **1-800-282-8069**
Workplace Safety and Health	**945-3446** **1-800-282-8069**

OTHERS

Employment Insurance Telephone Centre	**983-4662** **1-800-206-7218**
Human Resource Development Canada	**983-6375**
Manitoba Human Rights Commission	**945-3007** **1-888-884-8681**
Workers Compensation Board	**954-4321** **1-800-362-3340**

RURAL AND NORTHERN AREAS

Brandon 726-6480
1-800-821-4307

Brandon 726-6361
1-800-821-4307

Teulon 886-3731

Beausejour 268-6044

The Pas 627-8278
(Collect Calls Accepted)

Flin Flon 687-1621

Thompson 677-6821

Contact Citizen's Inquiry for other frequently called numbers. **945-3744** in Winnipeg
1-800-282-8060 outside of Winnipeg

102-01610/

A GUIDE TO EMPLOYMENT STANDARDS

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ABOUT EMPLOYMENT STANDARDS

Manitoba's employment standards laws (as outlined in *The Employment Standards Code*) promote fairness in the workplace for both employees and employers. The Employment Standards Branch is a neutral party that administers laws on minimum wages, hours of work, holidays and other workplace benefits. We are also responsible for investigating complaints of violations of these laws.

WORKING TOGETHER

Our aim is not only to enforce the legislation, but to ensure employees and employers are aware of their rights and responsibilities under these laws. We believe that fair employment practices benefit all Manitobans. We provide a comprehensive program of client initiated services, pro active services and labour adjustment services designed to promote stable and harmonious employment relationships.

Let's talk...

Members of our staff are available to speak to your group or association. Presentations can be general in nature, or can be tailored to address specific issues. Call your local office for more information.

ABOUT THIS GUIDE

This Guide provides **general** information about minimum employment standards in Manitoba. Please note that there are exceptions to the laws outlined in this publication. Also note that some workers in Manitoba are exempt from these laws because they are not covered by *The Employment Standards Code*, or they work in jobs that fall under federal jurisdiction.

If you are not sure if the information in this Guide applies to you or a specific work situation, contact us. We can answer your questions and tell you how to obtain copies of specific statutes and regulations.

For More Information

Call our 24-hour Inquiry Lines
1-800-821-4307 outside of Winnipeg
945-3352 inside Winnipeg

or contact the office nearest you:

- Winnipeg 604-401 York Avenue R3C 0P8
  945-3352
- Beausejour 268-6042
- Brandon 726-6370
- Thompson 677-6664

E-Mail: esb@labour.gov.mb.ca

Time limits apply for filing a claim. Contact the office nearest you for more information

You can download this guide and other fact sheets through our web site:
www.gov.mb.ca/labour/standards/

Labour Standards information for other Canadian jurisdictions can be obtained at www.labour-info-travail.org

WHO IS COVERED BY MANITOBA'S *EMPLOYMENT STANDARDS CODE*?

Most – but not all – employees in Manitoba fall under provincial jurisdiction and are served by the Employment Standards Branch.

Under the provincial *Employment Standards Code*, an employee is defined as an individual who is employed by an employer to do work.

Independent contractors (people who are self-employed) are not considered to be employees and are therefore not covered by Manitoba's *Employment Standards Code*. In addition, some parts of the Code do not apply to agricultural workers, sitters, professionals, part-time domestic workers, Crown employees, family members employed in a family business, temporary election workers and some others. As well, some employees who work in Manitoba fall under federal rather than provincial jurisdiction.

FEDERAL/PROVINCIAL JURISDICTION

Employees who work in the following areas do not fall under Manitoba's *Employment Standards Code* but are covered federally and are served by Human Resources Development Canada rather than the Employment Standards Branch. These include:

- licenced interprovincial and international services including:
  - railways
  - highway transport
  - telephone, telegraph and cable systems
  - pipelines
  - canals
  - ferries, tunnels and bridges
  - shipping and shipping services
- undertakings declared by Parliament to be for the general advantage of Canada such as:
  - grain elevators
  - flour and feed mills, feed warehouses and grain seed cleaning plants west of Thunder Bay, Ontario
  - uranium mining and processing
  - some individual undertakings such as Hudson Bay Mining and Smelting
- radio and television broadcasting, including cablevision
- air transport, aircraft operations and aerodromes
- banks (except credit unions and trust companies)
- primary fishing done for wages

For more information on federal jurisdiction, contact Human Resources Development Canada **(204) 983-6375**.

KEEPING RECORDS

Employers must maintain records of the following information about each employee.

- name, address, date of birth and occupation
- the date on which employment commenced
- the regular wage rate and overtime wage rate at the start of employment
- any changes to regular or overtime wage rates and the date of the changes
- separate records of regular hours of work and overtime recorded on a daily basis
- dates on which wages are paid and the amount paid on each date
- deductions from wages and the reasons for each
- time off taken instead of overtime wages
- dates on which general holidays are taken
- wage rate paid for work on general holidays
- the start and end date of each annual vacation, the period of employment in which it is earned, the amount of vacation allowance paid and when it was paid
- the amount and date of vacation allowance paid instead of an annual vacation upon termination of employment
- copies of documents relating to maternity, parental or other leave including dates and number of leave days taken
- the date of termination of employment
- any other record prescribed by regulation

These records must be kept at the employer's principal place of business in the province. Employers must retain records for 3 years. Records must be produced to an Employment Standards Officer upon request.

PAYING EMPLOYEES

Minimum Wage

The minimum wage is subject to change and does not include wage rates regulated under *The Construction Industry Wages Act.*

Effective April 1, 2001 the minimum wage is $6.25 per hour regardless of age.

Equal Pay

Female and male employees in the same establishment doing work that is the same or substantially similar must not be paid differently. To be considered substantially similar, jobs must require similar effort, skills and responsibilities, and be performed under similar working conditions.

Equal pay is not the same as pay equity. Equal pay relates to similar jobs within an establishment. Pay equity compares the value of different jobs within the establishment.

Frequency of Pay

Wages must be paid at least twice a month and within 10 working days after the end of each pay period. In cases of termination, wages must be paid to the employee within 10 working days of the date of termination.

Employee Pay Statements

At the time of paying wages, employers must provide each employee with a written statement showing regular and overtime hours paid, rate of pay, any deductions made and the reasons for each, and the net amount paid to the employee.

Deductions

Legal deductions include only those authorized by law or specifically consented to by the employee. If an employer's claim for compensation is based on the negligence of a specific act by the employee, a blanket authorization given at the start of employment as a condition of employment will not be recognized.

Employers do not have the right to offset costs or losses incurred in the course of doing business. Employers wishing to recover monies for anything not consented to by the employee may take the appropriate civil or criminal action.

Overtime

Standard hours of work are 8 hours per day, 40 hours per week unless exemptions are made through collective (union) agreements or through an Hours of Work Order from the Manitoba Labour Board. Some construction work is exempt from this standard. Employees are not required to work past the standard hours of work. Overtime can only be worked with the employer's permission or knowledge and/or at the employer's request.

How to Determine Overtime

The following examples shows regular and overtime hours in a 2 week period. Overtime hours are shown in bold face.

S M T W T F S	TOTAL	REGULAR	OVERTIME
8 8 8 8 8 **8**	48	40	**8**
8 6 6 8 **10**	38	36	**2**

Overtime Rates

All hours worked beyond standard hours of work (8 hours per day or 40 hours per week) must be paid at a rate of 1.5 times the employee's regular rate of pay.

Paid Time Off Instead of Overtime Pay

An employer and an employee may agree in writing that the employee take paid time off during his or her regular hours instead of overtime pay. The paid time off must be a minimum of 1.5 times the number of hours of overtime worked. The regular wage rate is paid for the time off.

Time off instead of overtime pay must be provided by the employer within 3 months of the end of the pay period in which the overtime occurs unless written approval for an extension is obtained from the Director of Employment Standards. If the time off is not taken within this period, outstanding overtime wages must be paid by the employer no later than 10 days after the time expires. In the case of termination of the employee, all outstanding overtime wages must be paid within 10 working days of termination.

EMPLOYMENT OF CHILDREN

No person may employ a child (under 16 years of age) without a permit. Applications are available from all Employment Standards offices, and must be signed by the child's parent or guardian, and the employer. The child's school principal must also sign if the work period is during the school year.

Permits are only issued after specific employment has been obtained. The employer must certify that the work or service the child will be performing will not be harmful to the child's safety, health or well-being.

VACATIONS

All employees covered by the Code are entitled to annual vacations with pay. For each year worked for the same employer, an employee is entitled to a 2-week paid vacation. After 5 consecutive years this rises to 3 weeks of paid annual vacation.

Vacation Allowance Payment

Employees who are entitled to a 2-week paid vacation must be paid a vacation allowance equal to 4% of gross wages earned during the qualifying year (excluding overtime). For employees who are entitled to a 3-week vacation, the vacation allowance rises to 6% of gross wages earned during the qualifying year (excluding overtime).

Unless the employee agrees otherwise, the employer must pay the vacation allowance by the last working day before the employee's annual vacation begins.

Vacation Allowance upon Termination of Employment

If employment terminates before the employee is entitled to take his or her annual vacation, the employer must pay the accrued vacation allowance.

Setting Annual Vacation Dates

If an employer and employee are unable to agree on annual vacation dates, the employer is required to provide at least 15 days notice of the date the employee's vacation is to begin. The employee must take the vacation at that time. If a business has a customary annual shut down period, the employer may require employees to take their annual vacations during that time. Employers cannot require an employee to take less than 1 week of vacation at a time.

GENERAL HOLIDAYS

The 7 annual general holidays in Manitoba are:

New Year's Day

Good Friday

Victoria Day

Canada Day

Labour Day

Thanksgiving Day

Christmas Day

Easter Sunday, the August Civic Holiday and Boxing Day are not general holidays. See page 7 of this Guide for information about Remembrance Day.

Eligibility for General Holiday Pay

To be eligible for general holiday pay, employees must:

- earn wages for part or all of the 15 out of 30 calendar days prior to the holiday;
- be available for work on their regular working days before and after the holiday; and
- report to work on the holiday if the employer requires it.

If a general holiday falls on a non-working day, eligible employees are entitled to a holiday with pay no later than the time of their next annual vacation, or a time mutually agreed on by the employer and employee.

If Canada Day, New Year's Day or Christmas Day fall on a Saturday or Sunday that is a non-working day, eligible employees are entitled to a holiday with pay immediately after the general holiday.

General Holidays for Minimum Wage Earners

Employees who earn minimum wage do not have to work 15 out of the 30 days prior to the general holiday to be eligible. If a general holiday falls on a minimum wage earner's regularly scheduled work day, and if the last scheduled shift prior to the holiday as well as the rest of the scheduled work days during the week of the holiday are worked, the employee is entitled to be paid normal wages for that day and to have the day off.

Payment for Working on a General Holiday

Eligible employees who work on a general holiday are entitled to be paid not less than their regular wages for the day in addition to the overtime wage rate for all hours worked on the holiday.

Employees not eligible for general holiday pay are entitled to the overtime rate for all hours worked on the holiday.

Time Off Instead of General Holiday Overtime Wages

Employees of gas stations, hospitals, hotels, restaurants, continuously operating plants, amusement places, seasonal industries (except the construction industry) and domestic services may be paid their regular rate for working on a general holiday if they are given another day off with pay. The time off with pay must be given within 30 days of the holiday or at a time mutually agreeable to the employer and employee.

Overtime for "Make-Up" Days

If an employee does not work on a general holiday that falls on a normal work day, but works on another day in the same week that would normally be the employee's day off, the employer must pay the overtime wage rate for the hours worked on the "make-up" day.

REMEMBRANCE DAY

For details see *The Remembrance Day Act R80* (Amended November 1996)

Remembrance Day (November 11) is not a general holiday. *The Remembrance Day Act* recognizes this day to commemorate the contributions made by Manitobans and Canadians who sacrificed health and life through war and international conflict. *The Remembrance Day Act* requires employers who carry on business on this day to suspend operations for 3 minutes starting at 1 minute before 11:00 a.m.

Conducting Business on Remembrance Day

Retail businesses can only operate before 9:00 a.m. and after 1:00 p.m. on Remembrance Day.

The following are permitted to operate throughout the day:

- essential services such as hospitals, public transportation, police, firefighters, and emergency services for furnace, heat and electric;
- hotels;
- restaurants;
- continuously operating plants;
- stores selling medicine; and
- veterinary services.

Pay for Working on Remembrance Day

Employees who work on Remembrance Day must be paid the same as for a general holiday under *The Employment Standards Code*. Employees who do not work on this day do not have to be paid for the day although many employers opt to do so.

Time Allowed for Voting

The time allowed for voting in federal and provincial elections is 3 hours. No time is legislated for municipal and school board elections. Polls are open from 8:00 a.m. to 8:00 p.m. for provincial elections, and 8:30 a.m. to 8:30 p.m. for federal elections.

MATERNITY AND PARENTAL LEAVE

Maternity Leave

A pregnant employee who has been employed by the same employer for at least 7 consecutive months is entitled to 17 weeks of unpaid maternity leave. Maternity leave may begin any time during the 17 weeks before the expected delivery day, and end no later than 17 weeks after the date of delivery.

The employee must provide written notice to her employer at least 4 weeks before the start of maternity leave.

Parental Leave

An additional 37 weeks unpaid parental leave is available to mothers and fathers (including adoptive parents) who have worked for the same employer for at least 7 consecutive months. A mother's parental leave must follow immediately after her maternity leave unless she and her employer agree to a different arrangement. Fathers may take parental leave at any time within 52 weeks of the child's birth or adoption. Written notice is required at least 4 weeks before the date on which parental leave will start.

An employee may end her maternity leave or his/her parental leave early by giving the employer written notice of at least two (2) weeks, or one (1) pay period (whichever is longer) before the day he/she wishes to end the leave.

Reinstatement After Leave

Following maternity or parental leave, the employee must be reinstated to his or her former position or a similar position. Wages and benefits must not be lower than prior to their leave.

Paid Leave

Paid maternity and parental benefits fall under federal jurisdiction. Contact your local Human Resources Development Centre (formerly Canada Employment Centre) for more information.

EMPLOYEE ENTITLEMENTS

Meal Break

Employees must have an unpaid meal break of at least 30 minutes for every 5 hours worked. Additional breaks are at the discretion of the employer. The minimum meal break may be shortened through a collective (union) agreement or by permission of the Manitoba Labour Board.

Weekly Day of Rest

Eligible employees are entitled to 1 day off each week. Some exceptions apply to home care, residential care and domestic workers as well as security personnel, caretakers and power engineers who reside in the building in which they are employed, and to some other employees. Exemptions may also be granted by the Manitoba Labour Board.

Minimum Call in Time Pay

If an employee is called to work on a day other than his or her regular work day, and is required to work for less than 3 hours, the employer must pay for 3 hours of work at regular wages. This does not apply to employees whose regular hours of work on a regular work day are 3 hours or less, or to employees scheduled to work 3 hours or less on the day in question. Employees of rural theatres, hotels or restaurants, and employees under the age of 16 years are also exempt.

Transportation

The employer is obligated to cover the cost of adequate transportation to an employee's residence or to the place of employment when the employee's work period begins or ends after midnight and prior to 6 a.m.

Police officers, employers of police officers and employees residing outside the city or town limits in which they are employed are exempt.

EMPLOYER DISCRETION

The following are not covered by Manitoba's *Employment Standards Code* and are at the discretion of the employer unless negotiated through collective (union) agreements:

- coffee breaks
- sick days
- compassionate or bereavement leave
- August Civic Holiday
- Easter Sunday
- Boxing Day

TERMINATION

Notice of Termination

In most cases, the employer or the employee must give notice of at least 1 pay period in advance if either wishes to terminate employment. Some exceptions to this requirement include, but are not limited to, the following:

- if the termination occurs within the first 30 days of employment;
- if the employer has established a different notice practice;
- if the employment is for a specific undertaking or length of time; or
- if the employer or employee acts in a violent or improper manner toward the other.

If an employer fails to provide sufficient notice of termination, the employee may be entitled to wages equal to the amount he or she would have earned had the notice been on time.

If an employee fails to provide proper notice, the employer may be entitled to retain or recover an amount equivalent to the employee's wages for 1 pay period.

Establishing a Different Termination Notice Practice

To establish a different termination notice practice, employers must:

- provide written terms of the practice to each employee; and
- post a notice of the practice in conspicuous sites at the workplace for 30 days.

The new practice is established once these steps are completed. Written notice of the practice must remain posted as long as it is in effect and must be given to each new employee at the time their employment begins.

Group Termination

Employers who intend to terminate the employment of 50 or more employees within a period of 4 weeks must provide written notice to the Minister of Labour, any applicable union, and to the affected employees as follows:

NUMBER OF EMPLOYEES	WEEKS OF NOTICE REQUIRED
50 – 100	10
101 – 299	14
300+	18

If the required notice is not provided, the employer must pay wages equivalent to the weeks of notice listed above.

EMPLOYEE PROTECTION

No employer or other person acting on behalf of an employer may threaten to or actually suspend, terminate or restrict the employment of an employee, or threaten to or actually lay off an employee, or discriminate against an employee for any of the following reasons:

- garnishment proceedings are taken or may be taken against the employee;
- the employee has or may file a complaint or may assist in the initiation of a complaint, prosecution or other proceedings under the Code;
- the employee has or may give information or evidence under the Code;
- the employee has or may make a statement or disclosure required under the Code; or
- the employee refuses or attempts to refuse to work on a Sunday if he or she is permitted to refuse under the Code.

Contracts Aimed at Circumventing the Code

An employee's agreement to work for less than minimum wage or under standards that are contrary to or less than those provided by the Code is not a defence in proceedings or prosecution under the Code.

Employers may provide wages or benefits better than those prescribed in the legislation. The Employment Standards Branch can collect wages and most benefits that are more favourable than those set out in this Guide.

THE CONSTRUCTION INDUSTRY

Wages and Hours of Work

Minimum wages for construction work are recommended to the Minister of Labour by the Construction Industry Wages Board. The Board, made up of industry and employee representatives, holds public hearings on construction wages before making its recommendations.

The hours of work and wage rates for the construction industry differ throughout the province. The wage schedules are published by the Employment Standards Branch and can be obtained from any Branch office. Inquiries regarding wage rates and hours of work must include the type of work and where in the province the work was done.

Vacations

Construction workers are entitled to paid vacation under the same terms as other employees. See previous section on Vacations, page 5.

General Holidays

All construction workers are entitled to be paid general holiday pay, based on 4% of their total gross regular earnings plus vacation allowance for the period worked during that year.

For Example:

Total Gross Regular Wages (excluding overtime)	$10,000.00
Vacation Allowance (6% after 5 years) $10,000 X 4%	+400.00
Subtotal	10,400.00
General Holiday Pay ($10,400 x 4%)	+416.00
	$10,816.00

In addition, construction workers who work on a general holiday must be paid 1.5 times their regular rate of pay for all hours worked on that day.

Termination Notice

Employers and employees engaged in construction work are not required to give advance notice when employment is terminated, unless stipulated otherwise in a collective (union) agreement. Employers must pay all wages owing to the employee within 5 working days of termination of employment.

INVESTIGATING CLAIMS

If an employment standards related dispute between an employee and employer cannot be resolved by the parties involved, either party may contact the Employment Standards Branch to file a claim. An Employment Standards Officer will be assigned to investigate the claim and will phone, write or visit the parties.

Co-operation between the parties and the Employment Standards Officer is essential to the resolution of the problem. The employer must ensure proper employment records are available for inspection by the Employment Standards Officer. The Officer may require:

- the production of records to inspect all books, payrolls and other records of an employer that in any way relate to the wages, hours of work or conditions of employment affecting any employee;
- original records or extracts from or copies of any entry records mentioned above; or
- full and correct statements, either orally or in writing, regarding the wages paid to all or any employees, and the hours or conditions of their employment.

Based on the evidence gathered from both parties, the Employment Standards Officer will determine whether or not there has been compliance with the legislation.

Appeals are referred to the Manitoba Labour Board as quickly as possible. For information on the adjudication process call the Registrar of the Manitoba Labour Board, **(204) 945-4276**.

APPEALING A DECISION

Officers try to resolve disputes based on the provisions of the Employment Standards legislation. If the Employment Standards Officer cannot resolve the dispute, an Order requiring the payment of wages may be issued to the employer, corporation and/or its directors. In the case of an employee failing to provide appropriate notice of termination to the employer, an Order to pay may be issued to the employee. Each Order issued includes an administrative fee in addition to the wage amount owing. The fee is $100 or 10% of the monies owing, whichever is greater. The maximum fee is $1,000.

Either party to an Order may appeal it by making a written request to have the case heard by the Manitoba Labour Board. The request for appeal should include detailed reasons for the appeal and must be submitted to the Director of the Employment Standards Branch within 7 days of receipt of the Order. If the appeal is being made by an employer, the request must include a deposit.

Either party to a dismissal may also appeal the Order by written request to the Director of Employment Standards within 7 days of receipt of the Order.

Time limits apply for filing a claim.
For more information, contact the
Employment Standards Branch.

HUMAN RIGHTS COMMISSION

The Manitoba Human Rights Commission enforces protection from discrimination in employment and other activities, as set out in *The Human Rights Code*. It does this by accepting and investigating human rights complaints, by providing advisory opinions, and through its educational programs.

Discrimination

Discrimination includes:

- treating an employee or applicant for employment differently because of a protected characteristic, such as race or age, and without reasonable cause;
- failing to reasonably accommodate the special needs of an employee that are based on a protected characteristic, such as religion, pregnancy or disability; and
- treating someone differently based on generalizations about a group he or she belongs to, is presumed to belong to, or associates with, and not on the basis of personal merit.

The Human Rights Code expressly prohibits unreasonable discrimination on the basis of ancestry, including colour and perceived race; nationality or national origin; ethnic background or origin; religion or creed; age; sex, including pregnancy; gender-determined characteristics; sexual orientation; marital or family status; source of income; political belief, association or activity; and physical or mental disability.

An intention to discriminate is not required for discrimination to be found.

Harassment

The Human Rights Code prohibits harassment based on any of the protected characteristics, including sex, race, religion, or sexual orientation.

Harassment includes:

- a course of abusive and unwelcome conduct or comment made on the basis of a protected characteristic;
- a series of objectionable and unwelcome sexual solicitations or advances;
- an unwelcome sexual solicitation or advance made by a person who is in a position to confer or deny a benefit to the recipient; and
- a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

An employer who fails to take reasonable steps to terminate the harassment of an employee by a supervisor, co-worker or customer/client can also be held responsible for the harassment.

Pregnancy and Maternity Leave

A woman who has not worked long enough to qualify for maternity leave under Employment Standards laws may still be entitled to a reasonable maternity leave under Human Rights laws.

The Human Rights Code requires reasonable accommodation of pregnancy, circumstances related to pregnancy and family status, to the point of undue hardship.

Another factor to consider is whether the employer allows other employees who have worked comparable lengths of time to have other kinds of leave, such as vacation and educational leave.

This is a simplified description of provisions under *The Human Rights Code*. For further information, please call the Commission at:

Voice: (204) **945-3007** or 1-888-884-8681
TTY: (204) 945-3442 (collect calls accepted)
or consult *The Human Rights Code*.